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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 09A02-0711-CR-939

APPEAL FROM THE CASS SUPERIOR COURT
The Honorable Richard Maughmer, Judge
Cause No. 09D02-0609-FB-26

May 7, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Curtis Hoby Hammons appeals the ten-year sentence the trial court imposed after he pleaded guilty to Burglary,¹ a class B felony. Specifically, Hammons argues that the trial court abused its discretion by failing to find several mitigating factors clearly supported by the record and that his sentence is inappropriate in light of the nature of the offense and his character. Finding no reversible error, we affirm the judgment of the trial court.

FACTS

On September 5, 2006, Hammons went to his father's house in Indianapolis, broke a basement window, and entered the residence. Hammons used tools from the basement to pry open the locked basement door and enter the living area of the house, where he stole jewelry and electronic equipment.

On September 6, 2006, the State charged Hammons with class B felony burglary and class D felony theft. On September 18, 2007, Hammons entered into a plea agreement with the State, whereby he agreed to plead guilty to the burglary charge and the State agreed to dismiss the remaining charge and cap the total sentence at ten years imprisonment.

On October 9, 2007, the trial court accepted the plea agreement and held a sentencing hearing. Hammons testified about his mental and behavioral difficulties and asserted that he committed the burglary because he was angry with his father. The trial court found Hammons's extensive juvenile history to be an aggravating factor, found no

¹ Ind. Code § 35-43-2-1.

mitigating factors, and sentenced Hammons to the advisory² term of ten years imprisonment. Hammons now appeals.

DISCUSSION AND DECISION

Hammons argues that the trial court abused its discretion by failing to find four mitigating factors—his troubled childhood, his mental illness, his guilty plea, and his belief that his father provoked him to commit the crime. Additionally, Hammons argues that his sentence is inappropriate in light of the nature of the offense and his character.

I. Proffered Mitigators

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007), our Supreme Court held that trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. We review sentencing decisions for an abuse of discretion. Id. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

² Indiana Code section 35-50-2-5 provides that a person who commits a class B felony shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years.

Hammons argues that the trial court abused its discretion by failing to find his troubled childhood to be a mitigating factor. However, our Supreme Court “has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight.” Coleman v. State, 741 N.E.2d 697, 700 (Ind. 2000) (emphasis added). Hammons did not present any evidence that his troubled childhood was related to the burglary; in fact, he claimed that he committed the crime to get revenge for recent allegations his father had made. Sent. Tr. p. 12-13. Thus, the trial court did not abuse its discretion by failing to find Hammons’s troubled childhood to be a mitigating factor.

Hammons testified at the hearing that he has been diagnosed as suffering from poly-substance abuse dependence, antisocial behavior, suicidal ideations, and borderline personality disorder. Id. at 6, 16. A defendant’s mental illness is to be afforded mitigating weight in circumstances that establish a nexus between the mental illness and the offense for which the defendant is sentenced. Evans v. State, 855 N.E.2d 378, 388 (Ind. Ct. App. 2006), trans. denied. Because Hammons did not demonstrate such a nexus, we conclude that the trial court did not abuse its discretion in failing to find his mental illness to be a mitigating factor.

The trial court did not acknowledge Hammons’s guilty plea in its sentencing statement. Our Supreme Court has held that “a defendant who pleads guilty deserves some mitigating weight to be given to the plea in return.” Anglemyer, 875 N.E.2d at 220. However, “an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant.” Id. at 220-21. Here, the

record reveals that Hammons received a substantial benefit from his guilty plea—the State dismissed an additional felony charge and he could not receive more than the advisory sentence for his crime. Additionally, there was overwhelming evidence of Hammons’s guilt and he waited more than one year after the charges were filed to plead guilty. Thus, even if the trial court abused its discretion by failing to find his guilty plea to be mitigating, we do not find it to be a significant mitigating factor warranting a remand or revision of Hammons’s sentence.

Finally, Hammons argues that the trial court should have found that he “acted under strong provocation” to be a mitigating factor. Appellant’s Br. p. 9. In essence, Hammons argues that a lifelong conflict with his father was provoked by the recent allegations and caused him to commit burglary. However, Hammons admitted at the hearing that his father had made the allegations “a few months” before his crime and that he had stopped worrying about them because he was “too busy.” Send. Tr. p. 13. We do not find Hammons’s impulsive decision to burglarize his father’s home to be a result of strong provocation because that decision was so far removed from the allegedly provoking event. Thus, we conclude that the trial court did not abuse its discretion by failing to find it to be a mitigator.

II. Appropriateness

When reviewing a sentence imposed by the trial court, we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). In conducting an appropriateness

review, we must examine both the nature of the offense and the defendant's character. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004). We may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied.

We recognize that the advisory sentence for an offense “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). Therefore, when the trial court imposes the advisory sentence, the defendant bears a heavy burden in persuading us that his or her sentence is inappropriate. McKinney v. State, 873 N.E.2d 630, 647 (Ind. Ct. App. 2007), trans. denied.

Regarding the nature of the offense, Hammons went to his father's home, broke a window, and entered the basement. He used tools to pry open the locked basement door and enter the living area, where he stole jewelry and electronic equipment. Hammons claims that he committed the offense because he was angry with his father and wanted to “get back at him” for accusations he made that Hammons had committed another burglary. Sent. Tr. p. 13. However, allegations his father made months before the incident do not excuse Hammons's impulsive decision to break into his home and steal his valuables. Thus, we do not find his ten-year sentence to be inappropriate in light of the nature of the offense.

Turning to his character, Hammons's juvenile criminal history consists of numerous true findings that would constitute shoplifting, auto theft, burglary, larceny, and false informing if committed by an adult. This laundry list of theft-related crimes

shows Hammons's penchant for taking property that does not belong to him—precisely the facts of the instant offense—and demonstrates his disregard for the law. While Hammons is certainly not the worst criminal offender, he has not convinced us that the advisory sentence is inappropriate in light of his character.

In arguing that his sentence is inappropriate, Hammons restates his arguments regarding his mental illness, his troubled childhood, and his problems with his father. We have already addressed those issues and decline to discuss them further. Based on our review of the record, we do not find Hammons's ten-year sentence to be inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.